

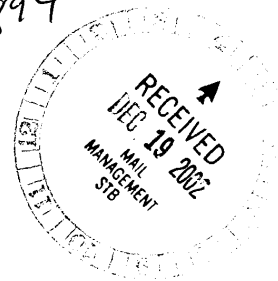
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DEC 19 2002

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34294



STATE OF VERMONT
-- ACQUISITION AND OPERATION EXEMPTION --
CERTAIN ASSETS OF NEWPORT AND RICHFORD RAILROAD COMPANY,
NORTHERN VERMONT RAILROAD COMPANY INCORPORATED AND
CANADIAN AMERICAN RAILROAD COMPANY

**MOTION OF STATE OF VERMONT
TO DISMISS NOTICE OF EXEMPTION**

FILED

DEC 19 2002

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
DEC 20 2002
Part of
Public Record

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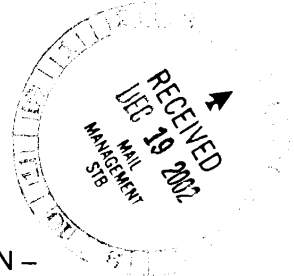
**ATTORNEYS FOR STATE OF
VERMONT AGENCY OF
TRANSPORTATION**

Dated: December 19, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34294

STATE OF VERMONT
-- ACQUISITION AND OPERATION EXEMPTION --
CERTAIN ASSETS OF NEWPORT AND RICHFORD RAILROAD COMPANY,
NORTHERN VERMONT RAILROAD COMPANY INCORPORATED AND
CANADIAN AMERICAN RAILROAD COMPANY



MOTION OF STATE OF VERMONT TO DISMISS NOTICE OF EXEMPTION

I. INTRODUCTION

Pursuant to a Purchase and Sale Agreement (the "Purchase Agreement")¹ entered into by and between the State of Vermont, acting through its Agency of Transportation ("Vermont") and James E. Howard, in his separate capacities as Chapter 11 Trustee (the "Trustee")² for the Estates of Newport and Richford Railroad Company ("N&R"), Canadian American Railroad Company ("CDAC") and Northern Vermont Railroad Company Incorporated ("NVT") (collectively, the "Seller"), Vermont will acquire, the Seller's right, title and ownership interest in the right-of-way, trackage and other physical assets of a railroad line (the "Subject Line"), approximately 61.58 route miles in

¹ A final draft of the Purchase Agreement is attached hereto as Exhibit A.

² On August 15, 2001, an involuntary Chapter 11 bankruptcy proceeding was filed against Bangor and Aroostook Railroad Company. On May 14, 2002, CDAC, NVT and N&R filed voluntary petitions for relief under Chapter 11. On September 19, 2002, the Surface Transportation Board ("STB" or "Board") served and published notice that Montreal, Maine & Atlantic Railway LLC ("MMA"), a noncarrier, filed a notice of exemption under 49 C.F.R. 1150.31 to acquire and operate, among other things, certain rail lines and other assets of CDAC, NVT and N&R in Maine and Vermont not including the Subject Line. See Montreal, Maine & Atlantic Railway LLC – Acquisition and Operation Exemption – Bangor & Aroostook Railroad Company, Canadian American Railroad Company, the Northern Vermont Railroad Company Incorporated, Newport & Richford Railroad Company and Van Buren Bridge Company, Finance Docket No. 34110 (STB served September 19, 2002).

length, between approximately milepost 63.58 in Newbury (Wells River), Vermont and approximately milepost 2.0 in Newport, Vermont. Under the terms of the Purchase Agreement, Vermont's acquisition will be subject to an exclusive freight railroad operations easement on the Subject Line (the "Freight Easement") that will be reserved by the Seller.³

In a separate transaction that will occur simultaneously with Vermont's acquisition, the Seller will convey the reserved Freight Easement to Washington County Railroad Company ("WCRC").⁴ WCRC will conduct freight rail operations on the Subject Line pursuant to an Operating Agreement with Vermont.⁵

Vermont has filed concurrently herewith a Verified Notice of Exemption (the "Notice") pursuant to 49 C.F.R. Section 1150.41, et seq. to acquire the Subject Line. Vermont hereby moves the Board to dismiss the Notice. Vermont submits that, because of the nature and terms of the proposed transaction as described in the Notice and the attached Purchase Agreement, Freight Easement and Operating Agreement,

³ A final draft of the Freight Easement to be reserved by the Seller is attached hereto as Exhibit B.

⁴ WCRC also will acquire by assignment from CDAC an exclusive freight railroad operations easement on a connected line of railroad between approximately milepost 123 in White River Junction, Vermont and approximately milepost 163 in Newport (Wells River), Vermont (the "White River Junction-Wells River Line"). WCRC contemporaneously is filing a notice of exemption to obtain Board approval of its proposed operations on the Subject Line and the White River Junction – Wells River Line. See Washington County Railroad Company – Acquisition and Operation Exemption – Certain Rights of Newport and Richford Railroad Company, Northern Vermont Railroad Company Incorporated and Canadian American Railroad Company, Finance Docket No. 34302.

⁵ A final draft of the Operating Agreement is attached hereto as Exhibit C.

the transaction is not subject to Board jurisdiction and consummation of the acquisition will not make Vermont a common carrier with respect to the Subject Line.

II. STATEMENT OF FACTS

A. The Parties

Vermont is a sovereign state which, acting through its Agency of Transportation, has the authority to acquire railroad assets in order to ensure the continuity of freight rail service by third parties over such properties. N&R, NVT and CDAC are Class III common carriers by rail that, in conjunction with their parent and affiliates, own or operate railroad lines in the northeast portion of the United States and Quebec, Canada.

B. The Subject Transaction

Under the Purchase Agreement, Vermont will acquire, the Seller's right, title and ownership interest in the right-of-way, trackage and other physical assets of the Subject Line. The Seller's conveyance to Vermont specifically excludes an exclusive Freight Easement over the Subject Line, which Freight Easement will be retained by the Seller and conveyed (in a separate, simultaneous transaction) to WCRC. See Purchase Agreement, Section 1(c). By virtue of its Freight Easement, WCRC will acquire all existing rights and obligations to provide common carrier freight rail service on the Subject Line. See Freight Easement, Section 1. Vermont will not acquire any right or ability under the relevant agreements to conduct freight rail operations or provide freight rail service on the Subject Line.

The Operating Agreement will provide that WCRC will be responsible for dispatching and control of operations on the Subject Line. WCRC will have the exclusive right to provide common carrier freight rail operations on the Subject Line.

See Operating Agreement, Section 2. The Operating Agreement will not give Vermont power to control WCRC's freight rail operations. Vermont will not conduct freight rail service on the Subject Line and will have no right to interfere with WCRC's operations as long as WCRC continues to provide service and to carry out its other obligations under the Operating Agreement.

Under the Operating Agreement, WCRC will be responsible for all maintenance on the Subject Line. WCRC will maintain the Subject Line to the requisite FRA standards. See Operating Agreement, Section 7. WCRC also will be responsible for all capital improvements on the Subject Line. WCRC will be permitted to construct additional freight connections on the Subject Line, as necessary for its freight rail service. See Operating Agreement, Section 8.

The Purchase Agreement, Freight Easement and the Operating Agreement together demonstrate that after the subject transaction is consummated, Vermont will not conduct freight rail operations on the Subject Line or hold itself out to the public as willing to do so. WCRC will acquire all rights that are necessary to conduct common carrier freight rail operations on the Subject Line.

III. ARGUMENT

A. Under Certain Circumstances, the Acquisition of Trackage is Not Subject to Board Jurisdiction

Whether a particular transaction is an acquisition of a railroad line depends on whether the acquiring company is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will

do as opposed to how it labels itself. Los Angeles County Transportation Commission – Petition for Exemption – Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (STB served July 23, 1996) ("LACTC/UP") at 5; see United States v. California, 297 U.S. 175, 181 (1936).

Subtitle IV of Title 49 defines "Railroad" to include "...the road used by a rail carrier and owned by it or operated under an agreement...." 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation...." 49 U.S.C. § 10102(5). The typical acquisition of a railroad line includes the conveyance of a property interest sufficient to permit the buyer to provide (or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (like the former ICC) has consistently recognized that under certain circumstances the acquisition of the physical assets of a rail line is not subject to its jurisdiction and does not make the buyer a common carrier with respect to the acquired line. Such precedent is applicable to and should govern the transaction proposed herein.

In State of Vermont and Vermont Railway, Inc. – Acquisition and Operation in Vermont, 320 I.C.C. 330 (1963), as modified at 320 I.C.C. 609 (1964), the State of Vermont sought ICC authority to acquire certain railroad lines formerly operated by the Rutland Railway Corporation and to immediately lease such lines to Vermont Railway for operation of freight service. The ICC concluded that the State of Vermont, which would not own any railroad equipment and would not operate any portion of the acquired lines, was not a common carrier within its jurisdiction and that its acquisition of the lines did not require ICC approval. Therefore, the ICC dismissed the State of

Vermont's application for authority to acquire the lines and granted Vermont Railway's application to lease and operate the line pursuant to a lease agreement with the State of Vermont.

In State of Maine, Department of Transportation—Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C. 2d 835 (1991)(“State of Maine”), the State of Maine, acting by and through its Department of Transportation (“MDOT”), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company (“MEC”), subject to MEC's retained easement for common carrier railroad operations.⁶ MEC's retained easement included access rights for maintenance and renewal of the line. As a result, MDOT's acquisition of the line's underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC's affiliate and lessee, Springfield Terminal Railroad (“STR”), from meeting its common carrier obligation, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw “no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation.” State of Maine, 8 I.C.C. 2d at 837.

Relying on State of Maine, the ICC reached a similar result in South Orient Railroad Company, Ltd. – Acquisition and Operation Exemption – Line of the Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 31971 (ICC served Sept. 2, 1992). In that case, South Orient Rural Rail Transportation District (“SORRTD”), an instrumentality of the state of Texas, acquired right-of-way and other fixed railroad

⁶ In State of Maine, MEC met its continued common carrier obligations by leasing the line to Springfield Terminal Railroad Company, which operated the line.

assets from the Atchison, Topeka and Santa Fe Railway Company ("ATSF"). ATSF conveyed an exclusive easement to operate freight railroad service over those assets to a separate entity, the South Orient Railroad Company ("SORC"). SORC and SORRTD then entered into a separate lease agreement pursuant to which SORC leased the railroad assets from SORRTD for purposes of conducting freight railroad operations thereon.

The ICC concluded that it did not have jurisdiction over the transfer of ATSF's right-of-way and trackage to SORRTD because SORC was acquiring all rights to operate freight service over the subject line. Although SORC's easement was subject to the terms of the lease agreement between SORC and SORRTD, which gave SORRTD the right to terminate under certain circumstances, the ICC concluded that SORRTD had "no right to interfere with [SORC's common carrier] operations as long as the railroad continued to provide service and to carry out its other obligations under the lease."⁷

In City of Oshkosh, WI and Wisconsin Central Ltd. – Petition for Declaratory Order, Finance Docket No. 32452 (ICC served June 8, 1994), the City of Oshkosh ("Oshkosh") sought a declaratory order that it was not subject to ICC jurisdiction as a result of its acquisition of the right-of-way of a rail line owned by Wisconsin Central Ltd. ("WCL"), subject to WCL's retention of an easement to provide freight operations over that line. Under the terms of the agreement between WCL and Oshkosh, WCL would retain all carrier-related duties such as dispatching and maintenance. The ICC determined that Oshkosh was not a common carrier as a result of its ownership of the

⁷ The South Orient case is factually similar to the instant proceeding, except that WCRC will provide service pursuant to an Operating Agreement rather than a lease.

rail line because WCL retained sufficient rights to fulfill its obligations as a carrier and Oshkosh would not hold itself out to provide freight rail service to the public.

In Chicago Terminal Corporation – Acquisition of Leasehold Exemption – Elgin, Joliet & Eastern Railway Company, Finance Docket No. 32495 (ICC served January 12, 1995), Chicago Terminal Corporation (“CTC”) filed a notice of exemption to acquire a non-exclusive leasehold interest in certain track from Elgin, Joliet & Eastern Railway Company (“EJE”) and an accompanying motion to dismiss for lack of jurisdiction. The relevant transaction agreements did not allow CTC to conduct any common carrier freight movements over the involved rail lines. The ability of EJE and/or other third parties to provide common carrier freight services was found to be adequately protected under the various agreements. Consequently, CTC was not a common carrier and the ICC did not have jurisdiction over the transaction.

In State of Georgia, Department of Transportation – Acquisition Exemption – Line of Central of Georgia Railroad Company, Finance Docket No. 33690 (STB served June 23, 1999), the Georgia Department of Transportation (“GDOT”) acquired the railroad assets of Central of Georgia Railroad Company (“COG”) except for a freight easement which was retained by COG. Pursuant to a separate agreement, COG agreed to transfer its retained freight easement to the Chattooga and Chickamauga Railway Company (“CCKY”), which was to continue to conduct freight operations over the line and assume COG’s common carrier obligations.

The Board held that GDOT did not become a rail carrier or acquire common carrier obligations on the line when it acquired COG’s rail assets. The Board noted the GDOT would not conduct any operations on the line, but instead CCKY would have the

ability to provide unrestricted freight service on the line. The Board also noted that the relevant agreements gave CCKY sufficient control over the operations and maintenance so as to ensure that there would be no undue interference by GDOT.

Taken together, State of Maine and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a carrier, provided that another company retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct carrier operations. Stated somewhat differently, if an acquisition of a rail line and trackage is subject to the operating interests of a common carrier and the acquiring entity does not control the carrier's operations, the acquiring company is not a common carrier subject to Board jurisdiction with respect to the acquired line.

B. Vermont's Acquisition of the Subject Line is Not Subject to Board Jurisdiction

Like the transaction in the State of Maine case and the other cases discussed above where the ICC or the Board found that the transaction in question was not subject to its jurisdiction, this transaction between Vermont and the Seller includes several distinguishing and important features. While Vermont will acquire certain real property and railroad assets, Vermont will not acquire the rights necessary to conduct or control common carrier freight operations on the Subject Line. Instead, the Seller will convey such rights to WCRC pursuant to the exclusive Freight Easement. As a result, WCRC will acquire all rights necessary to meet its common carrier obligation on the Subject Line. In other words, WCRC will acquire the entire existing rail freight transportation "estate."

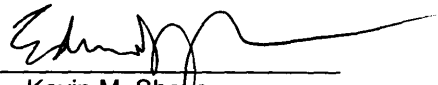
Vermont's ownership of the right-of-way and trackage will not interfere with or interrupt any freight rail operations on the Subject Line. WCRC's use of the Subject Line will be governed by the terms of an Operating Agreement that will ensure that Vermont will not unreasonably interfere with WCRC's freight operations. Under the terms of the Operating Agreement, WCRC will have the exclusive right to provide common carrier freight rail operations on the Subject Line. WCRC will have exclusive control and management of its freight rail operations on the Subject Lines. Pursuant to the Operating Agreement, WCRC will be responsible for maintenance and capital improvements on the Subject Line. Vermont will have no right to interfere with WCRC's operations as long as WCRC continues to provide service and to carry out its other obligations under the Operating Agreement.

Although in this transaction Vermont will acquire track that constitutes part of a line of "railroad" as that phrase is statutorily defined, Vermont will not acquire the right or ability to provide or control freight rail transportation. The Seller will retain the Freight Easement and convey such Easement to WCRC. Thus, for all freight rail transportation purposes, Vermont's acquisition of the Subject Line does not constitute an acquisition of a railroad line subject to the Board's jurisdiction. Vermont's ownership of the Subject Line in turn will not make it a common carrier with respect to this line of railroad because Vermont will not hold itself out as willing or able to provide freight rail transportation service to the public on the Subject Line.

IV. CONCLUSION

For the reasons set forth above, Vermont respectfully requests that the Board dismiss its notice of exemption filed herein for lack of jurisdiction.

Respectfully submitted,

By: 
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Edward J. Fishman
Tracie D. Spear
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, NW
Washington, DC 20036-1221
(202) 778-9000

**ATTORNEYS FOR STATE OF
VERMONT AGENCY OF
TRANSPORTATION**

Dated: December 19, 2002

LIST OF EXHIBITS

- Exhibit A Final Draft of Purchase and Sale Agreement between James E. Howard, in his separate capacities as Chapter 11 Trustee for the Estates of Newport and Richford Railroad Company, Canadian American Railroad Company and Northern Vermont Railroad Company Incorporated, and State of Vermont Agency of Transportation
- Exhibit B Final Draft of Freight Railroad Operations Easement from Estates of Newport and Richford Railroad Company, Canadian American Railroad Company and Northern Vermont Railroad Company Incorporated to Washington County Railroad Company
- Exhibit C Final Draft of Operating Agreement between State of Vermont Agency of Transportation and Washington County Railroad Company

EXHIBIT A

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT made this 18th day of December, 2002, by and between James E. Howard, in his separate capacities as Chapter 11 Trustee for each of the following: the Estate of Newport and Richford Railroad Company, a Vermont corporation ("N&R"), the Estate of Canadian American Railroad Company, a Maine corporation ("CDAC"), and the Estate of Northern Vermont Railroad Company Incorporated, a Delaware corporation ("NVR"), all with their principal places of business at Northern Maine Junction Park, 15 Iron Road, Hermon, Maine 04401 (collectively, the "Seller"); and the State of Vermont, a sovereign state, acting through its Agency of Transportation, with its principal office at National Life Building, Drawer 33, Montpelier, Vermont 05663-5001 (the "Buyer").

W I T N E S S E T H :

1. Definitions. The following terms shall have the meanings specified whenever used in this Agreement:

(a) Seller

James E. Howard, in his separate capacities as
Chapter 11 Trustee for each of the following: the
Estate of Newport and Richford Railroad Company,
the Estate of Canadian American Railroad Company,
and the Estate of Northern Vermont Railroad
Company Incorporated
Northern Maine Junction Park
15 Iron Road
Hermon, Maine 04401

Attention: Frederic W. Yocum, Jr., President

Send a copy of any notice to:

Mr. Mark Googins
Verrill & Dana, LLP
One Portland Square
Portland, Maine 04112-0586

(b) **Buyer**

State of Vermont
Agency of Transportation
National Life Building
Drawer 33
Montpelier, Vermont 05633-5001

Attention: Charles F. Miller, Director of Rail

Send a copy of any notice to:

John K. Dunleavy, Assistant Attorney General
Vermont Agency of Transportation
National Life Building
Drawer 33
Montpelier, Vermont 05633-5001

(c) **Premises:**

The Premises includes the major portion of N&R's so-called Lyndonville Subdivision extending approximately 61.58 miles from valuation station 2144+27 (CPR Lyndonville Subdivision Milepost 63.58) in Newbury, Vermont, to valuation station 5395+63.2 (CPR Lyndonville Subdivision Milepost 2.0) in Newport, Vermont, including all the Seller's interest in franchises, rights-of-way, land, buildings, tracks, other track materials, crossings, bridges, culverts, signals and appurtenances on its line of railroad between the two points specified.

The sale of the Premises also includes any trackage rights (or other operating rights) of N&R, NVR or CDAC, including without limitation any rights or obligations to operate any rail service on the Premises except such rights as are reserved in the Freight Rail Easement hereinafter described; however, the sale of the Premises does *not* include the Freight Railroad Operations Easement (hereinafter the "Freight Rail Easement") being conveyed to Washington County Railroad Company ("WCRC") pursuant to the terms and conditions of that easement, which is attached to this Agreement and marked as Exhibit "C".

(d) **Purchase Price:**

The agreed purchase price is **\$2,125,169.00**.

(e) **Deposit:**

None

(f) **Closing Date:** December 18, 2002, with effective date of 11:59 p.m. on December 31, 2002 (subject to bankruptcy court and regulatory approval, and consummation of the related Montreal, Maine & Atlantic Railway ("MM&A") transaction; see paragraphs 6 and 13, below)

(g) **Exhibits:** The following exhibits are hereby incorporated by reference into this Agreement:

- (1) Exhibit A: Valuation Plans, Valuation Section 43, Sheets 41 through 103, and related station land ("S.L.") plan sheets
- (2) Exhibit B: Quit-claim Deed (with attached Schedule of Assigned Contracts)
- (3) Exhibit C: Freight Railroad Operations Easement

2. Purchase and Sale. In consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration received by each party, the Seller hereby agrees to sell and the Buyer agrees to purchase the Premises, upon the terms and conditions set forth in this Agreement.

3. Title. The Premises shall be conveyed free of any mortgages or liens by a quit-claim deed running to the Buyer in a form substantially identical to that annexed hereto and marked as Exhibit "B" (the "Deed"). The Deed shall contain no warranties or covenants of title whatsoever and shall convey all the Seller's right, title and interest in the Premises, subject to the following:

- (a) Provisions of existing building, land use, subdivision control and zoning laws;
- (b) Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as (1) may appear of record as of the date of this Agreement, (2) listed on the Schedule of Assigned Contracts attached to

Exhibit B, or (3) may, with the Buyer's approval, be entered into by the Seller between the date of this Agreement and the Closing Date; and

- (e) The provisions, conditions and covenants set forth in the Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Deed by executing the Deed on or before the Closing Date.

4. Assignment of Leases and Agreement. This conveyance is made subject to various agreements between the Seller and third parties, a list of which is attached to Exhibit B and made a part hereof, and which the parties hereto agree shall be assigned by the Seller to the Buyer at the time of Closing, pursuant to the terms of the Deed. Such agreements (or legible copies thereof), together with the accompanying lease plats and the Seller's current billing information, will be furnished by the Seller to the Buyer at the time of delivery of the Deed.

It is agreed and understood that the Seller's assignment of leases to the Buyer will not include any of the common-carrier rights and obligations set forth in the existing lease and trackage right arrangements involving N&R, NVR and CDAC. Instead, all such common-carrier rights and obligations will be included in the Freight Rail Easement to be assigned by N&R and its affiliates to WCRC.

5. Freight Railroad Operations Easement. At the request of the Buyer, the Seller has excepted from the sale of the Premises and reserved unto itself certain rights which are contained in the Freight Rail Easement. The Seller agrees to assign the Freight Rail Easement to WCRC at Closing.

6. STB Approval. The Seller and the Buyer have determined that certain portions of this transaction require review by the STB. The obligations of the Seller and the Buyer regarding the STB are specifically detailed as follows:

- (a) The Seller and the Buyer will cooperate with each other to obtain an exemption from the STB for the purchase of the Premises by the Buyer and for any other action pursuant to this Agreement requiring STB authorization, including without limitation the sale of any trackage or other operating rights of N&R, NVR or CDAC in accordance with paragraph 1(c) above, the termination of any rights referred to in paragraph 21 below or the actions referred to in paragraph 32 below.
- (b) The Seller and the Buyer will cooperate with each other and with WCRC to obtain an exemption from the STB for the line's operation by WCRC pursuant to Exhibit "C" hereto.

- (c) Obtaining the exemptions referred to above shall be the Buyer's responsibility.
- (d) Closing shall not occur until such exemptions become effective.

7. Deed; Surveys. The Buyer shall prepare the Deed upon the existing valuation maps and other information earlier provided to the Buyer by the Seller. The Seller agrees to execute the Deed, Freight Rail Easement, Vermont Property Transfer Return and similar documents in fifteen (15) counterparts, sufficient in number for the Buyer to promptly record the Deed in the land records of each of the twelve (12) towns in which the Premises are located, as well as to provide the Seller, Buyer, and WCRC with a fully executed file copy. The Buyer will provide the Seller with the appropriate number of counterpart originals at least two (2) full business days prior to Closing so that the Seller may arrange for execution by its authorized agent in advance of Closing.

At Closing, the Seller also will provide the Buyer with twelve (12) certified copies of an order of the United States Bankruptcy Court for the District of Maine authorizing the Trustee to consummate the sale of the Premises to the Buyer, free and clear of all liens, claims, interest and encumbrances.

If a recordable survey is for any reason required for completion of the transaction, or so desired by the Buyer, then and in that event the Buyer shall furnish to the Seller no later than ten (10) days prior to the Closing Date:

- (a) A satisfactory linen or Mylar deed plan of the Premises (the "Plan") or part of the Premises covered by the Plan which: (1) is prepared by a Vermont-licensed land surveyor, (2) is suitable in all respects for recording in the local town clerk's office, (3) contains a certification by a Vermont-licensed land surveyor as to the actual land area comprising the Premises (or part of the Premises covered by the Plan), and (4) contains such other information as the Seller reasonably may require; and
- (b) A description of the Premises (or the Part of the Premises covered by the Plan) by metes and bounds, consistent with and referring to the Plan, which description shall be attached to and become part of the Deed.

The Seller agrees to reasonably cooperate with the Buyer or the Buyer's agents to furnish the information necessary for the Buyer to complete the Plan.

The Buyer agrees to reimburse the Seller for all loss, cost, damage and expense (including reasonable attorneys' fees and expenses) arising in any way out of the presence or activities upon the Premises by the Buyer, the licensed land surveyor or the agents, servants, employees or contractors or any of them, whether such loss, cost, damage or expense is incurred by the Seller,

the Buyer, the licensed land surveyor, or the agents, servants, employees or contractors of the same, or by others.

8. Adjustments to Purchase Price. Water rates, rents, real estate and other property taxes and sewer charges (collectively, the "Taxes") shall be apportioned as of the Closing Date and the Buyer and the Seller will each be responsible for the Taxes applicable to their period of ownership. If the amount of Taxes is not known at least ten (10) days prior to the Closing Date, they shall be apportioned as soon as verified current information can be obtained. The latter provision shall survive the delivery of the Deed.

9. Fees, Costs and Transfer Taxes. The Vermont Property Transfer Tax does not apply to this transaction because the Buyer is the State of Vermont, making this an exempt transaction under 32 V.S.A. § 9603(2). Notwithstanding the foregoing, the Buyer agrees to pay any recording fees or real estate transfer taxes of any description that may be imposed on either the Buyer or Seller on account of this transaction by any government or governmental entity.

10. Just Compensation; Possible Use of Federal Funds. The Seller acknowledges (a) that it has been informed by the Buyer that the Buyer may seek participation of federal funds in some or all of the Buyer's cost of acquisition and rehabilitation of the premises and (b) that it has been informed by Buyer of the right to receive just compensation for the premises. The Seller hereby releases Buyer, to the extent permitted by law, from any obligation to secure an appraisal of the Premises, notwithstanding any requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894, as amended, and the implementing regulations of the United States Department of Transportation, 49 C.F.R. Part 24.

11. Condition Precedent. Buyer's obligations under this Agreement, including its obligation to purchase the Premises, are subject to the following condition, which runs to the Buyer's exclusive benefit: Buyer must be satisfied with the level of hazardous waste or contaminated materials, if any, upon the Premises. Buyer may perform at its cost an environmental assessment of the Premises and shall provide notice to Seller on or before June 15, 2002 of the results of such assessment, including in such notice a statement as to whether Buyer is satisfied with the condition of the Premises with regard to hazardous wastes or contaminated materials. If no assessment is made, then this condition is deemed as met.

In the event that this condition precedent is not satisfied (or waived) by the Buyer, then this Agreement shall terminate without recourse by or against either party.

12. Vermont Real Estate Withholding Tax. N&R, being the Seller that owns Vermont real estate, acknowledges that its attention has been directed to the provisions of the Vermont Real Estate Withholding Tax (see 32 V.S.A. § 5847), which require a buyer of real estate in Vermont to withhold an amount equal to 2.5% of the consideration paid for the transfer. To avoid withholding, N&R, at least 15 days before the Closing Date, must furnish the Buyer with

(a) a certificate by N&R stating, under penalty of perjury, N&R's employer identification number (EIN) and the fact that N&R is a Vermont resident, or (b) a certificate from the Vermont Commissioner of Taxes stating that no withholding is required.

13. Closing. The Deed shall be delivered and the Purchase Price (less any amount required to be withheld by the Buyer under 32 V.S.A. § 5847[d]) shall be paid by State of Vermont treasurer's check, made payable to "James E. Howard, Trustee", at the office of the Buyer's Rail Division, Fourth Floor, National Life Building, One National Life Drive, Montpelier, Vermont, at 10 o'clock a.m. on the Closing Date, unless the parties otherwise agree beforehand in writing. It is agreed that time is of the essence in all respects to this transaction.

Notwithstanding the foregoing, Closing is subject to the granting of an order by the United States Bankruptcy Court for the District of Maine authorizing the Trustee to consummate the sale of the Premises to the Buyer, free and clear of all liens, claims, interest and encumbrances, including exposing the Premises to sale to a third party presenting a higher or better offer than the Buyer.

The Buyer shall not have any obligation to close on this transaction unless the Seller has tendered the Freight Rail Easement to WCRC pursuant to the terms and conditions of Exhibit C.

The Seller's obligation to close shall be contingent upon the consummation of the closing of the related MM&A transaction.

14. Possession. The Seller shall deliver possession of the Premises to the Buyer at 11:59 p.m. on December 31, 2002, or, if later, on the closing date of the MM&A transaction, subject only to the provisions of paragraph 4 hereof, the Premises then being in the same condition as they now are, reasonable wear and tear excepted.

15. Valuation Maps, Deeds, Etc. At the time of delivery of the deed, the Seller will furnish the Buyer with original right-of-way and track map sheets (or legible, full-scale Mylar prints of such sheets), together with plans of bridges and culverts, pertaining to the Premises, as well as the originals (or legible, full-scale copies) of such deeds, condemnation awards or other instruments as are extant and in the Seller's possession that evidence original acquisition of the Premises by the Seller or its predecessors-in-interest, as well as sell-offs and other relevant transactions.

16. Seller's Default. In the event that the Seller, for any reason, is unable to give title or make conveyance of the Premises to the Buyer in accordance with the terms of this Agreement, then the obligations of the parties shall cease, this Agreement shall be void and neither party shall have further recourse against the other. This paragraph shall not apply to any obligations existing on or after the Closing Date.

17. Risk of Loss. If between the execution of this Agreement and the Closing Date any part of the Premises with a fair market value of at least \$100,000 in the aggregate is materially damaged or destroyed and is not restored to the condition existing at the time of the execution of this Agreement before the Closing Date, then the Seller and the Buyer shall endeavor in good faith to agree on the amount of the reduction in the fair market value of the Premises and Seller shall provide to Buyer a credit in that amount at Closing. If Seller and buyer cannot agree on the amount of this reduction in the fair market value of the Premises, Buyer shall have the right to terminate this Agreement. In the event Buyer does not advise Seller prior to Closing of a damaged condition pursuant to this paragraph, the Seller shall have no obligation to compensate the Buyer in any manner for any such damage or destruction.

18. Removal of Encumbrances. At or before Closing, the Seller shall clear the title of any mortgage, lien, lease or other title encumbrance not in accordance with the terms of this Agreement, including (but not limited to) the following:

<i>Date</i>	<i>Description</i>	<i>Name of Grantee, etc.</i>
08-12-1999	Lease	Allfirst Financial Center, N.A.
08-12-1999	Sub-lease	Bangor & Aroostook R.R. Co., <i>et al.</i>
08-12-1999	Mortgage	Allfirst Financial Center, N.A.
08-12-1999	Assignment of Mortgage	BankAustria, etc.
08-12-1999	Sub-lease	Northern Vermont R.R. Co. Inc.
08-12-1999	Leasehold Mortgage, etc.	BankAustria, etc.
08-12-1999	Leasehold Mortgage, etc.	BankAustria, etc.
08-12-1999	UCC-1	BankAustria, etc.
08-12-1999	UCC-1	Bank Austria, etc.
08-12-1999	UCC-1	Allfirst Financial Center, N.A.

This requirement shall be satisfied by the Seller's delivery to the Buyer of the certified copies of an order of the United States Bankruptcy Court for the District of Maine, as further described in paragraphs 7 and 13.

The Buyer hereby agrees that, to the extent any monetary cures are required, the Buyer will cure any defaults of any contracts assigned to it by the Seller in this transaction.

19. Acceptance of Deed. The Buyer's acceptance of the Deed shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller contained in this Agreement, except for those that are, by the terms of this Agreement, to be performed after the delivery of the Deed and Payment of the Purchase Price.

20. Broker. The parties represent and warrant to each other that neither has dealt with any broker in respect to this transaction or the Premises. The provisions of this paragraph shall survive the delivery of the Deed and the payment of the Purchase Price.

21. Warranties. Each party acknowledges that it has not been induced to enter into this Agreement, and the transaction contemplated in this Agreement, in reliance upon any warranties or representations of any party not set forth in this Agreement. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a physical inspection of the Premises would reveal. This paragraph shall survive the delivery of the Deed and the payment of the Purchase Price.

The Seller represents and warrants that to the best of Seller's knowledge (after a reasonable search of Seller's records) any and all trackage rights (or other operating rights of any kind) applicable to the Premises, including but not limited to any trackage or operating rights of NVR or CDAC will be terminated at or prior to Closing, unless included in the scope of the Freight Rail Easement conveyed to WCRC. Seller covenants to promptly terminate any trackage rights (or other operating rights of any kind) discovered after Closing, including the obtaining of any necessary regulatory approvals. This paragraph shall survive the delivery of the Deed and the payment of the Purchase Price.

22. Approvals; Releases. The Seller's obligations under this Agreement are conditioned upon the Seller's obtaining any necessary releases, approvals or permits relating to the sale of the Premises by the Seller from any state or federal government or governmental authority having jurisdiction over the Premises.

23. Hazardous Waste. The Buyer hereby acknowledges that the Buyer is purchasing the Premises "as is," "with all faults" and subject to the possible existence of hazardous materials, petroleum products and/or other pollutants regulated by law.

Notwithstanding the foregoing paragraph, the Seller certifies that it has not received any notices from the United States Environmental Protection Agency (the "EPA") or any other federal or state enforcement agency (collectively, "enforcement agencies"), or been the subject of any environmental enforcement action, in relation to the Premises. Further, relative to the Premises, the Seller shall promptly furnish to the Buyer true and complete copies of all documents, submissions and correspondence provided by the Seller to the EPA or enforcement agencies, and all documents, reports, directives and correspondence provided by the EPA or enforcement agencies to the Seller. The Seller shall also promptly furnish to the Buyer true and complete copies of all sampling and test results obtained from samples and tests taken on and adjacent to the Premises.

The Buyer acknowledges that the Seller has furnished the Buyer with a copy of Section 5.03(i) of the September 27, 1996 Asset Purchase Agreement pursuant to which the Canadian Pacific Railway Company ("CP") agreed to indemnify N&R with respect to environmental conditions existing at the St. Johnsbury yard. To the extent that it is assignable, the Seller hereby assigns this right of indemnification to the Buyer, effective upon Closing. Furthermore, the

Seller also agrees to provide the Buyer with copies of the Phase I environmental assessments and Phase II environmental analyses previously furnished to the Seller by CP.

24. Notices. Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the address set forth in paragraph 1 of this Agreement. Either party may change the address at which notices are to be received by notice given as set forth above.

25. Authority of Signatory. If either party executes this Agreement by agent or representative, then such agent or representative hereby warrants and represents to the other party that he or she is authorized to execute, acknowledge and deliver this Agreement on behalf of the party which he or she purports to represent. This warranty shall survive the delivery of the Deed.

26. Assignment. The Buyer may not assign this Agreement, or any interest herein, without the prior written consent of the Seller, which consent shall not be unreasonably withheld.

27. Severability. If any term of this Agreement or its application to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable, then the remainder of this Agreement and the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected.

28. No Waiver. No delay or omission on the part of the Seller in exercising its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement. Also, no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

29. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

30. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement, supersedes all prior oral or written offers, negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter of this Agreement and is subject to no understandings, conditions or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by all parties.

31. Interchange and Other Rights at Newport. It is agreed and understood by the parties that arrangements for the interchange of railroad traffic at Newport will be the subject of separate negotiations between the Seller or its affiliates or their successors and the railroad

operator designated by the Buyer. The Seller and the Buyer, as their respective interests appear, will use their best efforts to facilitate negotiation of appropriate terms and conditions for such interchange. This paragraph shall survive the delivery of the Deed and the payment of the Purchase Price.

32. White River Junction – Wells River Line. At Closing, CDAC will:

- (a) Assign to WCRC all of its rights in the Railroad Freight Easement pertaining to the White River Junction – Wells River line that was assigned to CDAC by the Green Mountain Railroad Corporation on January 24, 2001 (retroactive to October 29, 2000); and
- (b) Execute a memorandum terminating the Operating Agreement dated January 24, 2001 (retroactive to October 29, 2000) between the State of Vermont, Agency of Transportation and CDAC.

33. Tax Compliance. As required by Vermont law (32 V.S.A. § 3113), the Seller hereby certifies, under the pains and penalties of perjury, that it is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of this Agreement.

34. Routings. The parties agree to cooperate in providing for a process to deliver/handle shipments, including those in transit, to/from points on the Premises. This process, including the Seller's entry into an agreement with WCRC for the apportionment of revenues and expenses as of the Closing Date, shall be completed prior to the Closing Date.

35. Paragraph Headings. The paragraph headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

36. Miscellaneous. This Agreement shall take effect as a sealed instrument and be binding upon and inure to the benefit of the parties and their respective successors, heirs, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in two counterparts, effective as of the day and year first above written.

SELLER:

**NEWPORT AND RICHFORD RAILROAD
COMPANY**

Debtor under Chapter 11 of the U.S Bankruptcy Code

Witness

By: _____
James E. Howard, Its Chapter 11 Trustee

CANADIAN AMERICAN RAILROAD COMPANY
Debtor under Chapter 11 of the U.S. Bankruptcy Code

Witness

By: _____
James E. Howard, Its Chapter 11 Trustee

**NORTHERN VERMONT RAILROAD COMPANY
INCORPORATED**

Debtor under Chapter 11 of the U.S. Bankruptcy Code

Witness

By: _____
James E. Howard, Its Chapter 11 Trustee

BUYER:

**STATE OF VERMONT
AGENCY OF TRANSPORTATION**

Witness

By:

K. Micque Glitman, Its Deputy Secretary of
Transportation and Duly Authorized Agent

APPROVED AS TO FORM:

DATED: _____

ASSISTANT ATTORNEY GENERAL

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FREIGHT RAILROAD OPERATIONS EASEMENT

FREIGHT RAILROAD OPERATIONS EASEMENT ("Freight Easement") granted December 18, 2002 (effective December 31, 2002), by James E. Howard, in his separate capacities as Trustee (the "Trustee") of the Chapter 11 Estates of the NEWPORT AND RICHFORD RAILROAD COMPANY, a Vermont corporation, the CANADIAN AMERICAN RAILROAD COMPANY, a Maine corporation, and the NORTHERN VERMONT RAILROAD COMPANY INCORPORATED, a Delaware corporation, (collectively, "Affiliated Railroads"), to WASHINGTON COUNTY RAILROAD COMPANY, a Vermont corporation ("OPERATOR").

WHEREAS, the Affiliated Railroads and the State of Vermont, acting through its Agency of Transportation ("VTrans"), have entered into a Purchase and Sale Agreement ("Purchase Agreement") covering the Affiliated Railroads' conveyance to VTrans of their ownership interest in the Premises described in Exhibit B thereto ("Premises"); and

WHEREAS, pursuant to the terms of the Purchase Agreement, the Affiliated Railroads' conveyance of the Premises to VTrans specifically excludes the Freight Easement more particularly described herein; and

WHEREAS, pursuant to the terms of the Purchase Agreement between the Affiliated Railroads and VTrans, the Affiliated Railroads have agreed to convey this Freight Easement to OPERATOR to enable OPERATOR to provide common carrier rail freight service on the Premises; and

WHEREAS, by order dated December __, 2002, the United States Bankruptcy Court for the District of Maine has authorized the Trustee to convey the Freight Easement to OPERATOR free and clear of all liens, claims, interest and encumbrances.

NOW, THEREFORE, in consideration of the premises, reservations, covenants and undertakings contained in the Purchase and Sale agreement, the Affiliated Railroads hereby grant the following easement to OPERATOR:

1. **GRANT OF FREIGHT EASEMENT**

1.1 Subject to the terms and conditions hereof, the Affiliated Railroads hereby grant to OPERATOR a rail freight easement for the purpose of providing common carrier rail freight service to all present and future freight customers having access to the Premises described in Exhibit B to the Purchase and Sale Agreement between the Affiliated Railroads and VTrans (which description is attached hereto as Appendix A).

1.2 This Freight Easement is for common carrier rail freight service on the Premises. The Freight Easement shall grant OPERATOR the exclusive right to conduct freight railroad operations on the Premises, including the right to operate with its trains, locomotives, rail cars and rail equipment with its own crews over the Premises for the purposes set forth in this Freight Easement.

1.3 This Freight Easement is subject to and conditioned upon authorization of the Surface Transportation Board, in form and substance satisfactory to the Affiliated Railroads, which authorization terminates all obligations of the Affiliated Railroads or any of their affiliates to provide rail service on the Premises, including without limitation common-carrier freight service on the Premises.

1.4 This Freight Easement granted by the Affiliated Railroads in the Premises includes a right of entry over the Premises for any and all OPERATOR employees, agents or representatives, machinery, vehicles or equipment which OPERATOR reasonably may deem necessary or convenient for the purposes of inspecting the Premises, clearing any derailments or wrecks of OPERATOR's trains on the Premises or otherwise conducting OPERATOR's rail freight service over the Premises in accordance with this Freight Easement.

1.6 This Freight Easement is granted in conjunction with a separate Operating Agreement between OPERATOR and VTrans dated December 18, 2002 (effective December 31, 2002). Pursuant to that Operating Agreement, OPERATOR shall not have the right to grant access to the Premises to third parties without VTrans' consent, which consent may be withheld by VTrans in its sole discretion.

1.7 OPERATOR shall not have the right to assign its interests in this Freight Easement except as provided in the Operating Agreement between OPERATOR and VTrans dated December 18, 2002 (effective December 31, 2002).

2. TERM AND TERMINATION

This Freight Easement shall terminate and be extinguished and all real property rights granted to OPERATOR hereunder shall vest in the owner of the Premises upon the termination, pursuant to an order of the Surface Transportation Board ("STB"), of common carrier rail freight service on the Premises or any part thereof; provided, however, that a termination of this Freight Easement pursuant to such an order shall apply only to those sections of the Premises subject to such STB order. The termination provisions of this Section 2 shall not apply to a termination of rail freight service by OPERATOR done as part of a transfer of this Easement and its common carrier freight rights and obligations to a successor or assign.

3. INDEMNIFICATION

OPERATOR hereby agrees to release, indemnify and hold harmless the Trustee, the Affiliated Railroads, their corporate affiliates and their respective directors, officers, agents and employees, from and against any and all claims, suits, actions, causes of action, demands, losses, costs, damages and expenses whatsoever, occasioned by any claims, suits, actions, administrative or judicial proceedings ever asserted, threatened or instituted by OPERATOR, any third person or governmental agency, including without limitation VTrans, under any theory of law seeking to hold the Trustee, the Affiliated Railroads, their affiliates and/or OPERATOR liable for any

acts or omissions of any person after conveyance of the Easement and arising from or related to this Easement or rail operations on the Premises. This provision shall expressly survive the term of this Easement.

IN WITNESS WHEREOF, James E. Howard, in his separate capacities as Trustee of the Chapter 11 Estates of the **NEWPORT AND RICHFORD RAILROAD COMPANY**, the **CANADIAN AMERICAN RAILROAD COMPANY**, and the **NORTHERN VERMONT RAILROAD COMPANY INCORPORATED**, has signed this instrument, this 18th day of December, 2002.

IN PRESENCE OF :

**NEWPORT AND RICHFORD
RAILROAD COMPANY, CANADIAN
AMERICAN RAILROAD COMPANY,
and NORTHERN VERMONT
RAILROAD COMPANY,
INCORPORATED**
Debtors under Chapter 11 of the U.S.
Bankruptcy Code

Witness

By:

James E. Howard, Their Chapter 11 Trustee

STATE OF VERMONT)

WASHINGTON COUNTY, ss.)

At Montpelier, this 18th day of December, 2002, personally appeared James E. Howard, and he acknowledged the foregoing instrument by him, in his separate capacities as Trustee of the Chapter 11 Estates of the **NEWPORT & RICHFORD RAILROAD COMPANY**, the **CANADIAN AMERICAN RAILROAD COMPANY**, and the **NORTHERN VERMONT RAILROAD COMPANY, INCORPORATED** subscribed, to be his free act and deed and the free act and deed of the **NEWPORT & RICHFORD RAILROAD COMPANY**, the **CANADIAN AMERICAN RAILROAD COMPANY**, and the **NORTHERN VERMONT RAILROAD COMPANY, INCORPORATED**.

Before me,

Notary Public
(My commission expires Feb. 10, 2003)

IN WITNESS WHEREOF, WASHINGTON COUNTY RAILROAD COMPANY
has caused this instrument to be signed in its corporate name by David W. Wulfson, its President
and duly authorized agent, this 18th day of December, 2002.

IN PRESENCE OF :

**WASHINGTON COUNTY RAILROAD
COMPANY**

Witness

By:

David W. Wulfson, Its President and
and Duly Authorized Agents

STATE OF VERMONT)
WASHINGTON COUNTY, ss.)

At Montpelier, this 18th day of December, 2002, personally appeared David W. Wulfson
and he/she acknowledged the foregoing instrument by him/her as President and duly authorized
agent of **WASHINGTON COUNTY RAILROAD COMPANY** subscribed, to be his/her free
act and deed and the free act and deed of the **WASHINGTON COUNTY RAILROAD
COMPANY.**

Before me,

Notary Public
(My commission expires Feb. 10, 2003)

Appendix A

DESCRIPTION OF THE PREMISES

Certain parcels or strips of land along a line of railroad, sometimes referred to as the Canadian Pacific Railway's "Lyndonville Subdivision" and also sometimes referred to as the "Connecticut & Passumpsic Rivers Railroad," so-called, including all stations, buildings, bridges, turntables, structures, crossings, culverts, fixtures and improvements thereon and including all appurtenances thereto, if any, owned by the Seller, extending approximately 61.58 miles from valuation station 2144+27 (CPR Lyndonville Subdivision Milepost 63.58) in the Town of Newbury, through the town of Newbury, in Orange County, continuing through the towns of Ryegate, Barnet, Waterford, St. Johnsbury, Lyndon, Burke and Sutton, all in Caledonia County, and continuing through the towns of Barton, Irasburg, and Coventry, and the City of Newport, all in Orleans County, to valuation station 5395+63.2 (CPR Lyndonville Subdivision Milepost 2.0), all as more specifically and particularly delineated by boundary lines (one long dash and two short dashes) on valuation maps, prepared in accordance with standards prescribed by the former Interstate Commerce Commission, entitled in part:

RIGHT-OF-WAY AND TRACK MAP
THE CONNECTICUT AND PASSUMPSIC RIVERS R.R. CO.
OPERATED BY THE CANADIAN PACIFIC RAILWAY
~~BOSTON AND MAINE R.R.~~
SCALE: 1" = 100' JUNE 30, 1914

and numbered consecutively V43/41 to V43/103 and including Station Land Maps V43/SL-41 (Wells River), V43/SL-70 and V43/SL-70a (Lyndonville).

Also included are the lands and premises in the Town of St. Johnsbury, Vermont, described in the September 4, 1964 quit-claim deed of the St. Johnsbury and Lamoille County Railroad to the Newport and Richford Railroad Company, which is recorded in the St. Johnsbury land records at Book 124, Pages 105-109, having been received for record on September 15, 1964.

The conveyance of the Premises includes any leasehold interest of the Canadian American Railroad Company, the Northern Vermont Railroad Company, Incorporated, or the Bangor and Aroostook Railroad Company on the Premises. The conveyance of the Premises shall not include the Freight Railroad Operations Easement being conveyed to Washington County Railroad Company pursuant to the terms and conditions of Exhibit C of the Purchase and Sale Agreement.

In the areas described above, the Newport and Richford Railroad Company is the successor-in-interest to the Connecticut & Passumpsic Rivers Railroad Company, the Boston and Maine Railroad, and the Canadian Pacific Railway Company. It is the intent of this instrument to convey all the Newport and Richford Railroad Company's property described herein regardless of whether record title is held in the name of the Newport and Richford Railroad Company, one of its predecessor companies or one of its corporate affiliates.

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EXHIBIT C

OPERATING AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of December, 2002, by and between WASHINGTON COUNTY RAILROAD COMPANY, a Vermont corporation with its principal office at One Railway Lane, Burlington, Vermont 05401-5290 ("OPERATOR") and the STATE OF VERMONT, a sovereign state, acting by and through its Agency of Transportation, with its principal office at National Life Building, Drawer 33, Montpelier, Vermont 05633-5001 ("VERMONT").

WITNESSETH:

WHEREAS, on or about December 8, 1999, the Boston and Maine Corporation ("B&M") and VERMONT entered into a Purchase and Sale Agreement ("the 1999 Purchase Agreement") pursuant to which B&M conveyed to VERMONT its ownership interest in the line of railroad formerly known as the Berlin Branch between Hartford (White River Junction), Vermont and Newbury (Wells River), Vermont ("Berlin Branch"), as more particularly described in the 1999 Purchase Agreement; and

WHEREAS, pursuant to the terms of the Purchase Agreement and Exhibit H thereto, B&M excluded a freight railroad operating easement (the "1999 Freight Easement") from its conveyance to VERMONT and instead conveyed the 1999 Freight Easement to Green Mountain Railroad Corporation ("GMRC"); and

WHEREAS, on or about January 24, 2001 (retroactive to October 29, 2000), GMRC assigned the 1999 Freight Easement to Canadian American Railroad Company ("CDAC"); and

WHEREAS, James E. Howard, as Chapter 11 Trustee of the Newport & Richford Railroad Company ("N&R"), CDAC, the Northern Vermont Railroad Company, Inc. ("NVR"), and various affiliated companies, has entered into a Purchase and Sale Agreement ("the 2002 Purchase Agreement") with VERMONT pursuant to which N&R and its affiliates conveyed to VERMONT ownership of a line of railroad formerly known as the Lyndonville Subdivision between MP 63.58 (valuation station 2144+27) in Newbury (Wells River), Vermont and MP 2.0 (valuation station 5395+63.2) in Newport, Vermont ("Lyndonville Subdivision"); and

WHEREAS, pursuant to the terms of the 2002 Purchase Agreement, N&R and its affiliates excluded a freight railroad operating easement (the "2002 Freight Easement") from their conveyance to VERMONT and instead conveyed the 2002 Freight Easement to OPERATOR; and

WHEREAS, pursuant to the terms of the 2002 Purchase Agreement, CDAC also has assigned the 1999 Freight Easement to OPERATOR; and

WHEREAS, the parties hereto desire to enter into an Operating Agreement to govern OPERATOR's interim usage of the combined White River Junction-Newport line ("the Connecticut & Passumpsic Line") for rail freight transportation service until VERMONT selects a permanent freight operator for the Line;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS

Except as otherwise specifically provided, the following capitalized terms shall have the meanings specified below whenever used in this Agreement:

"Agreement" shall mean this Operating Agreement.

"Connecticut & Passumpsic Line" means the line of railroad between White River Junction and Newport, Vermont, as more particularly described in the 1999 and 2002 Purchase Agreements.

"Designated Operator" shall mean the entity designated by VERMONT to become the permanent freight operator on the Line following the expiration or termination of this Agreement.

"Freight Easements" shall mean (a) the freight railroad operating easement originally conveyed by B&M to Green Mountain Railroad Corporation, as more particularly described in Exhibit H to the 1999 Purchase Agreement, and (b) the freight railroad operating easement conveyed by N&R and its affiliates to OPERATOR pursuant to the 2002 Purchase Agreement;

"1999 Purchase Agreement" shall mean the Purchase and Sale Agreement dated December 8, 1999 pursuant to which B&M conveyed a freight railroad operating easement over the Berlin Branch to Green Mountain Railroad Corporation and the rest of its ownership interest in the Berlin Branch to VERMONT.

"Party" or "Parties" shall mean the signatories to this Agreement, unless otherwise specified.

"2002 Purchase Agreement" shall mean the Purchase and Sale Agreement dated December __, 2002 pursuant to which N&R and its affiliates conveyed a freight railroad operating easement over the Lyndonville Subdivision to OPERATOR and the rest of its ownership interest in the former Lyndonville Subdivision to VERMONT.

SECTION 2. PERMITTED USE OF CONNECTICUT & PASSUMPSIC LINE

(a) Subject to the terms and conditions herein provided, OPERATOR shall have the exclusive right to operate its trains, locomotives, cars and equipment with its own crews over

the Connecticut & Passumpsic Line for the purpose of conducting freight railroad operations thereon for the entire term of this Agreement.

(b) OPERATOR shall have exclusive control and management of its freight rail operations on the Connecticut & Passumpsic Line.

(c) OPERATOR shall be entitled to all revenues derived from its provision of freight rail service on the Connecticut & Passumpsic Line.

SECTION 3. RESTRICTIONS ON USE OF THE LINE

OPERATOR shall not, without prior written consent of VERMONT, which consent may be withheld by VERMONT in its sole discretion:

(a) conduct any passenger or commuter railroad operations on the Connecticut & Passumpsic Line;

(b) permit any person, entity or railroad other than VERMONT or its designee to conduct any freight or passenger operations on the Connecticut & Passumpsic Line;

(c) grant any easement, lease, license or right of occupancy in, on, under, through, above, across or along the Connecticut & Passumpsic Line, or any portion thereof, to any third party; or

(d) cause or knowingly suffer the creation of any encumbrance or lien on the Connecticut & Passumpsic Line or any portion thereof.

SECTION 4. ASSIGNMENT OF CONTRACTS

(a) VERMONT shall assign to OPERATOR its rights in any easements, crossing agreements and other agreements ("Contracts") affecting the use, occupancy or possession of all or any portion of the Line, to the extent such rights are necessary for OPERATOR to conduct freight rail operations on the Line. OPERATOR shall be responsible for any and all liabilities under such Contracts and shall be entitled to any and all benefits under such Contracts, to the extent such liabilities and benefits are applicable to its freight rail operations on the Connecticut & Passumpsic Line.

(b) Upon expiration or termination of this Agreement, OPERATOR shall immediately relinquish its rights under such Contracts and shall not be liable for any obligations or eligible for any benefits arising from such Contracts which accrue after the date of termination or expiration.

SECTION 5. TERM AND TERMINATION

(a) This Agreement shall become effective at 11:59 p.m. on December 31, 2002 (the "Effective Date").

(b) This Agreement shall continue in full force and effect for a period of six (6) months from the Effective Date unless terminated before the expiration of such period by VERMONT in its sole discretion. The term of the Agreement may be extended beyond the initial six-month period by VERMONT in its sole discretion; provided, however, that OPERATOR's consent is required to extend the term more than six (6) months beyond the original termination date.

(c) OPERATOR covenants and agrees to perform its common carrier freight railroad obligations over the Line for the entire term of this Agreement, including any extensions to the initial six-month term which may be agreed upon by the parties. Upon the expiration or termination of the Agreement, OPERATOR covenants and agrees to transfer and convey its Freight Easements to VERMONT's Designated Operator. OPERATOR also covenants and agrees that, upon expiration or termination of this Agreement, OPERATOR shall immediately cease its freight rail operations on the Line, vacate its occupancy of any portion of the Line and remove any of its property from the Line. OPERATOR also covenants and agrees to cooperate in any regulatory filings which may be necessary to effectuate the transfer and conveyance of its Freight Easement to VERMONT's Designated Operator. OPERATOR shall also transfer, assign and/or convey any contractual rights necessary to perform its common carrier obligation to provide freight rail transportation service over the Line to VERMONT's Designated Operator upon expiration or termination of this Agreement.

(c) The rights, benefits, duties and obligations running from or to either party under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the expiration or termination of this Agreement.

(d) Expiration or termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to termination hereof.

SECTION 6. TAXES AND UTILITIES

(a) VERMONT shall be responsible for the payment of all taxes which may be assessed, levied, charged, confirmed or imposed by any governmental authority on the Connecticut & Passumpsic Line

(b) OPERATOR shall initiate, contract for and obtain, in its name, any and all utility services required on the Connecticut & Passumpsic Line during the term of this Agreement, including gas, electricity, telephone, water and sewer connections and services, and OPERATOR shall bear and pay all charges for those services as they become due during the term of this Agreement.

(c) OPERATOR shall be solely responsible for all costs, expenses, charges, obligations and liabilities, of any nature and kind, relating to or arising from OPERATOR's

use, occupancy, interest in, maintenance of or operations on the Connecticut & Passumpsic Line during the term of this Agreement.

SECTION 7. MAINTENANCE OF CONNECTICUT & PASSUMPSIC LINE

(a) OPERATOR shall maintain and make running repairs to the Connecticut & Passumpsic Line with its own supervision and labor. OPERATOR shall keep and maintain the Connecticut & Passumpsic Line in "as is" condition and up to standards necessary for the use herein contemplated.

SECTION 8. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) If any changes in, additions and betterments to or retirements from the Connecticut & Passumpsic Line are required by any law, rule, regulation or ordinance promulgated by any governmental body having jurisdiction over the Connecticut & Passumpsic Line, OPERATOR shall construct the additional or altered facilities and VERMONT shall pay to OPERATOR the cost thereof, including the expense of maintaining, repairing and renewing such additional or altered facilities throughout the term of this Agreement.

(b) Unless OPERATOR receives prior written approval from VERMONT, VERMONT's obligation under the preceding paragraph shall not exceed \$10,000.

SECTION 9. MANAGEMENT AND OPERATIONS

OPERATOR shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Connecticut & Passumpsic Line. OPERATOR shall indemnify, protect, defend, and save harmless VERMONT and its executives, agents and employees from and against all fines, penalties and liabilities imposed upon OPERATOR or its parent corporation, subsidiaries and affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction over the Connecticut & Passumpsic Line, when attributable solely to the failure of OPERATOR to comply with its obligations in this regard.

(b) OPERATOR's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Connecticut & Passumpsic Line as published in Railway Line Clearances.

SECTION 10. LIABILITY

(a) OPERATOR shall be solely responsible for (i) any loss and/or liability for loss of, damage to, or destruction of the property of VERMONT, its employees, agents, contractors or invitees, (ii) any loss and/or liability for loss of, damage to or destruction of the property

of any other person, entity, agency, firm, partnership or corporation whatsoever to the extent caused by the gross negligence of OPERATOR, (iii) any liability for injury to or death of any person whomsoever, in each case relating to, resulting from or arising out of OPERATOR's use, maintenance of or operations on the Connecticut & Passumpsic Line. It is agreed and understood that OPERATOR shall not be responsible for any landowner liability not involving OPERATOR's use, maintenance of or operations on the Connecticut & Passumpsic Line.

(b) OPERATOR hereby releases VERMONT, its officers, agents, and employees from, and agrees forever to protect, indemnify, defend, and hold harmless VERMONT, its officers, agents, and employees from and against, any and all claims, actions, costs, damages, losses, and expenses in any manner caused by, arising out of, or connected with OPERATOR's assumption of liability under subsection(a) of this Section 10.

SECTION 10A. REIMBURSEMENT

(a) For the duration of this Agreement, VERMONT shall reimburse OPERATOR for its reasonable and documented expenses incurred under this Agreement, including but not limited to the expenses of inspecting, maintaining and operating the Connecticut & Passumpsic Line, up to a level consistent with the level of service required under present circumstances.

(b) Unless otherwise approved in writing by VERMONT, VERMONT's obligation to reimburse OPERATOR under the preceding paragraph shall not exceed the maximum limiting amount of \$32,000.00 per month.

(c) VERMONT also agrees to reimburse OPERATOR for all reasonable costs associated with Surface Transportation Board and other regulatory filings necessitated by the transfer of the Freight Easements to OPERATOR and their subsequent transfer to VERMONT's Designated Operator.

SECTION 11. INSURANCE

(a) During the entire term of this Agreement, OPERATOR shall keep and maintain in force insurance of the following types and minimum coverages, in a form and carried by insurers acceptable to VERMONT:

- (1) A standard comprehensive general liability policy with a liability limit not less than \$10 million per occurrence and including the State of Vermont as an additional insured; and
- (2) A standard policy covering liability under the Federal Employer's Liability Act, which may be included in the same policy as the insurance required to be provided under section 11(a)(1) above.

(b) OPERATOR shall furnish VERMONT with appropriate certificates of insurance which shall specifically state the insurance company shall furnish to VERMONT at least thirty (30) days' notice of any lapse or material change in such insurance. This provision shall not, however, be deemed to establish the liability of VERMONT for the payment of any premiums or other charges for the insurance coverage.

SECTION 12. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of OPERATOR to perform its obligations under this Agreement and its continuance in such default for a period of thirty (30) days after written notice thereof by certified mail from VERMONT, VERMONT shall have the right at its option, and notwithstanding any waiver by VERMONT of any prior breach thereof, to terminate OPERATOR's right to use the Connecticut & Passumpsic Line under this Agreement, subject to and in accordance with any applicable laws or government regulations.

SECTION 13. DISPUTE RESOLUTION

The parties agree that they will attempt, in the first instance, to resolve any disputes that may arise under this Agreement by direct negotiations, with VERMONT represented by its Transportation Railway Administrator. Any disputes not resolved by such direct negotiations shall be referred to the VERMONT's Director of Rail. In the event that OPERATOR is aggrieved by the decision of the Director of Rail, then OPERATOR, within 30 days of the Director's decision, may appeal in writing to the Secretary of Transportation through the Director of Rail, requesting a hearing. The notice of appeal shall completely outline the nature and extent of the question or questions appealed and shall provide copies of any supporting documentation. The decision of the Secretary of Transportation may be appealed to superior court, as provided in Rule 74 of the Vermont Rules of Civil Procedure.

SECTION 14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that OPERATOR shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, or its Freight Easement or any of its rights, interests or obligations thereunder, to any person, firm, or corporation without obtaining the prior consent of VERMONT, which consent may be withheld by VERMONT in its sole discretion. OPERATOR covenants and agrees, however, to transfer and assign its Freight Easement and any of its rights, interests or obligations thereunder to VERMONT's Designated Operator upon expiration or termination of this Agreement.

SECTION 15. NOTICE

Any notice required or permitted to be given by any one party to any other party under this Agreement shall be given to all parties to the Agreement and shall be deemed

given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to OPERATOR:	Washington County Railroad Company One Railway Lane Burlington, Vermont 05401-5290 Attention: David W. Wulfson, President
If to VERMONT:	Vermont Agency of Transportation National Life Building Drawer 33 Montpelier, Vermont 05633-5001 Attention: Charles F. Miller, Director of Rail
With copy to:	Assistant Attorney General Vermont Agency of Transportation National Life Building Drawer 33 Montpelier, VT 05633-5001

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

SECTION 16. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the parties hereto.

(b) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings among the parties.

(c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.

(d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(e) All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(f) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

(g) This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

SECTION 16A. RECORDS AVAILABLE FOR AUDIT

The OPERATOR will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this Agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter by any authorized representative of VERMONT or the federal government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. VERMONT, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

SECTION 16B. FAIR EMPLOYMENT PRACTICES AND ADA

The OPERATOR agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. The OPERATOR shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the OPERATOR under this Agreement. The OPERATOR further agrees to include this provision in all subcontracts.

SECTION 16C. SET OFF

VERMONT may set off any sums which the OPERATOR owes the State of Vermont against any sums due the OPERATOR under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

SECTION 16D. TAXES DUE TO THE STATE OF VERMONT

(a) OPERATOR understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income-tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

(b) OPERATOR certifies under the pains and penalties of perjury that, as of the date the contract is signed, the OPERATOR is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due to the State of Vermont.

(c) OPERATOR understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the OPERATOR is not in good

standing with respect to, or in full compliance with a plan to pay, any and all taxes due to the State of Vermont.

(d) OPERATOR also understands that the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the OPERATOR has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the OPERATOR has no further legal recourse to contest the amounts due.

SECTION 17. REGULATORY APPROVAL

The parties acknowledge that this Agreement requires Surface Transportation Board ("STB") approval and shall cooperate in obtaining such approval in a timely fashion. The parties also acknowledge that transfer and assignment of OPERATOR's Freight Easement to VERMONT's Designated Operator may require STB approval. The parties shall cooperate, to the extent necessary, to obtain such approval in a timely fashion and OPERATOR will not have to pay any expenses or fees in connection with any STB proceeding which may be required to effectuate the transfer and assignment of its Freight Easement. In the event that this Agreement expires or terminates and VERMONT fails to select a Designated Operator within one hundred twenty (120) days thereafter, Vermont will pay for any expenses or fees that OPERATOR may incur in connection with an STB abandonment or discontinuance proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

**WASHINGTON COUNTY
RAILROAD COMPANY**

By:

David W. Wulfson, Its President and
Duly Authorized Agent

WITNESS:

**STATE OF VERMONT
AGENCY OF TRANSPORTATION**

By:

Brian R. Searles, Its Secretary of Trans-
portation and Duly Authorized

APPROVED AS TO FORM:

DATED: _____

ASSISTANT ATTORNEY GENERAL

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